

**Ordinance No. 2020-040****City of Minneapolis****File No. 2019-00699**

Author: Fletcher

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1st Reading: Jun 21, 2019

Committee: PECE, POGO

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RECORD OF COUNCIL VOTE				
COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT
Bender	X			
Jenkins	X			
Johnson	X			
Gordon	X			
Reich	X			
Fletcher	X			
Cunningham	X			
Ellison	X			
Goodman	X			
Cano	X			
Schroeder	X			
Palmisano	X			

MAYOR ACTION☒ APPROVED☐ VETOED

MAYOR

AUG 05 2020

DATE

Certified an official action of the City Council

ATTEST:

CITY CLERK

Presented to Mayor: **JUL 31 2020**Received from Mayor: **AUG 05 2020****Amending Title 2, Chapter 40 of the Minneapolis Code of Ordinances relating to Administration: Workplace Regulations.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Chapter 40 of the Minneapolis Code of Ordinances be amended by adding thereto a new Article VI to read as follows:

CHAPTER 40, ARTICLE VI. – FREELANCE WORKER PROTECTIONS**40.700. – Short Title.** This Article VI shall be known and may be cited as the Minneapolis Freelance Worker Protections Ordinance.

40.710. – Findings; Purpose. The City Council makes the following findings:

(a) As a home rule charter city, Minneapolis has broad authority through its police powers to enact regulations to further the public health, safety, and general welfare.

(b) The number of individuals who are independent contractors or perform freelance work for some portion of their income is substantial and growing. According to the U.S. Bureau of Labor Statistics, in 2017 there were 10.6 million U.S. workers who reported that they worked as independent contractors, independent consultants, or freelancers as their main or primary job. According to another study, in 2019 there were 57 million U.S. workers who performed freelance work either full or part time, and 35% of U.S. workers performed freelance work for some share of their income.

(c) According to the U.S. Census Bureau, the majority of all business establishments in the United States are “nonemployers,” which are primarily self-employed business owners without paid employees. Many of these nonemployer businesses work as independent contractors. Between 2016 and 2017, the number of nonemployer businesses increased nationally by 3.6% and their receipts increased by 5.6%, adding over \$65 billion to the United States economy. In 2016, there were 403,926 nonemployer small businesses in Minnesota alone.

(d) Further analysis of this Census Bureau data shows that Minneapolis is one of the largest markets nationally for skilled professional, technical, and creative independent workers. In 2017, the Minneapolis metropolitan statistical area was the 13th largest freelance market in the country for skilled independent workers. In 2018, skilled independent workers alone were projected to make up 4.1% of the Minneapolis labor force.

(e) Artists and creative workers are a substantial part of the City’s economy. According to the Minneapolis Creative Index 2018, creative jobs in the City grew by 14.4% between 2006 and 2016. Creative jobs make up 4.9% of all Minneapolis jobs, as compared with 2.9% of all jobs nationally. Additionally, 27% of all creative jobs in Minnesota are located in Minneapolis, making the creative economy of particular importance to the City. Many of the City’s artists and creative workers are independent contractors.

(f) However, independent contractors have far fewer legal and economic protections for their work than employees have.

(g) Nationally, a 2017 Princeton University survey of workers who identify as independent contractors, independent consultants, or freelancers found that 36% of them had not been paid on time at least once in the past year, and 27% of them had not been paid in full for a job or project performed in the last year. Additionally, according to the Freelancer’s Union, 71% of freelancers report facing problems with late payment or non-payment.

(h) In response to a City survey of independent contractors, respondents reported that ninety-two percent (92%) of their contracts completed in Minneapolis in the previous twelve (12) months were contracts with businesses, including app platforms / gig economy companies. Of the independent contractors who responded to the survey, more than thirty-three percent (33%) report having lost income in the last twelve (12) months due to a hiring party’s failure to pay, underpayment, or late payment for work performed, with an average lost income of over seven hundred fifty dollars (\$750) per instance.

(i) Requiring contracts for freelance work, and increasing opportunities for enforcement of those contracts, helps to solve the all too common problem of freelance workers not being paid in a timely manner, or at all, for their work and provides a measure of protection for independent workers who lack the legal protections afforded to employees.

(j) Eliminating and preventing the theft of income earned by freelance workers promotes the public health and the general welfare by increasing economic security and dignity, increasing workers' ability to care for themselves and their families, and addressing the injustice they experience when they do not receive the income they have earned.

(k) Eliminating and preventing theft of freelance workers' earned income also promotes business and economic development within the City, as well as the City's economic strength and vitality, through the elimination of unfair economic competition by unscrupulous businesses that do not pay or underpay their freelancers.

(l) Eliminating and preventing theft of freelance workers' earned income supports the growth and prosperity of the City's smallest businesses and the City's artistic and creative economy.

(m) Eliminating and preventing theft of freelance workers' earned income also diminishes the burden imposed on the public when the contractors of unscrupulous businesses are forced to rely on public assistance due to underpayment or nonpayment of their earned income.

(n) Eliminating and preventing theft of freelance workers' earned income makes Minneapolis a safer, stronger, and more vibrant City.

(o) For all of these reasons, it is the policy of the City and the purpose of this Ordinance to eliminate and prevent theft of freelance workers' earned income.

40.720. - Definitions. The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Calendar year means the twelve (12) month period that begins on January 1 and ends on December 31.

City means the City of Minneapolis.

Commercial Hiring Party means any person or entity regularly engaged in business or commercial activity, including a digital network-based entity, who retains a freelance worker to provide any service as part of that business or commercial activity. A person or entity is regularly engaged in business or commercial activity if such person or entity owns or operates any trade, occupation, or business, including a not for profit business, or holds itself out as engaging in any trade, occupation, or business. For purposes of this Article, "commercial hiring party" does not include any of the following:

(1) The United States government.

(2) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.

(3) Any county or local government, except the city.

Department means the Minneapolis Department of Civil Rights.

Director means the Director of the Department of Civil Rights, or the Director's designee.

Freelance Worker means any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is retained as an independent contractor by a hiring party to provide services in exchange for compensation. However, this term does not include:

(1) Any person who, pursuant to the contract at issue, is a sales representative as defined in Minn. Stat. § 325E.37;

(2) Any person who, pursuant to the contract at issue, is a commission salesperson as defined in Minn. Stat. § 181.145, subd. 1;

(3) Any person duly authorized to practice law, who is engaged in the practice of law pursuant to the contract at issue; and

(4) Any person who is a licensed medical professional, acting within the scope of that license.

Hiring party means any commercial hiring party or individual hiring party.

Individual Hiring Party means any person who retains a freelance worker to provide any service when the person is acting in a personal capacity and not as part of or on behalf of a business or commercial activity.

Retain means to enter into a contract through which the freelance worker provides services either to the hiring party or to a third party. This includes, but is not limited to, contracts where a commercial hiring party facilitates through a digital network the freelance worker's provision of services to a third party and the third party's payment for those services.

40.730. – Contract with Commercial Hiring Parties. (a) This section applies whenever a commercial hiring party retains the services of a freelance worker to perform services within the City of Minneapolis, and the agreed-upon compensation for such services is either of the following:

(1) six hundred dollars (\$600) or more, or reasonably expected to be six hundred dollars (\$600) or more, either by itself or when aggregated with all contracts for services between the same commercial hiring party and freelance worker during the calendar year, or

(2) two hundred dollars (\$200) or more, or reasonably expected to be two hundred dollars (\$200) or more, either by itself or when aggregated with all contracts for services between the same commercial hiring party and freelance worker, for work to be performed within a time period of seven consecutive days.

(b) The commercial hiring party shall reduce the contract to writing and obtain the freelance worker's signature or written assent. The commercial hiring party shall provide the freelance worker with a copy of the contract.

(c) The written contract shall include at least the following information:

- (1) The name and address of both the commercial hiring party and the freelance worker;
- (2) An itemization of all material services to be provided by the freelance worker;
- (3) The compensation for the services, including the rate or rates and method of compensation; and
- (4) The date on which the commercial hiring party must pay the agreed upon compensation or the mechanism by which the date will be determined.

(d) If the parties are not able to specifically state the total compensation before the contract has been performed, the written contract shall also include a detailed statement of the method by which the total compensation will be determined and an agreement regarding which party will be responsible for tracking the information necessary to determine the total compensation (e.g., hours worked or pieces completed).

(1) If the freelance worker is responsible for tracking the information necessary to determine the total compensation, the freelance worker shall provide the commercial hiring party with an invoice setting forth the total compensation due and a detailed calculation by which the amount was determined.

(2) If the commercial hiring party is responsible for tracking the information necessary to determine the total compensation, the commercial hiring party shall provide the freelance worker with an earnings statement setting forth the total compensation being paid and a detailed calculation by which the amount was determined.

(3) If the information necessary to determine compensation for the work is tracked using a commercial hiring party's digital network, the commercial hiring party shall be responsible for the tracking of the information necessary to determine the total compensation and shall not shift this responsibility to the freelance worker. The commercial hiring party shall provide the freelance worker with an earnings statement including sufficient detail to allow the freelance worker to verify the calculations by which the total compensation was determined.

40.740. – Contract with Individual Hiring Parties. (a) This section applies whenever an individual hiring party retains the services of a freelance worker to perform services within the City of Minneapolis, and the agreed-upon compensation for such services is six hundred dollars (\$600) or more, or is reasonably expected to be six hundred dollars (\$600) or more, either by itself or when aggregated with all contracts for services between the same individual hiring party and freelance worker during the calendar year.

(b) A freelance worker retained by an individual hiring party is protected by Section 40.760 only if the contract described in subsection (a) is in writing. A freelance worker who desires that the contract be in writing must present a proposed written contract to the individual hiring party before the work begins. If the freelance worker desires that the contract be in writing, the freelance worker shall not begin the work, and the hiring party shall not require that the work begin, unless the parties have agreed upon written terms and both parties have signed or given their written assent. If the contract is reduced to writing, the freelance worker shall provide the individual hiring party with a copy of the written contract.

(c) The written contract shall include at least the following information:

- (1) The name and address of both the individual hiring party and the freelance worker;
 - (2) An itemization of all material services to be provided by the freelance worker;
 - (3) The compensation for the services, including the rate or rates and method of compensation; and
 - (4) The date on which the individual hiring party must pay the agreed upon compensation or the mechanism by which the date will be determined.
- (d) This section does not create any obligation for an individual hiring party to retain the services of a freelance worker who has proposed a written contract, nor does it require either party to enter into a contract if the parties are unable to agree upon the terms.

40.750. – Services to be Performed in the City. (a) A freelance worker may establish that a hiring party retained the freelance worker to perform services within the City by demonstrating, for example:

- (1) That the hiring party specified where the services were performed; or
- (2) That the hiring party provided a location within the City at which the freelance worker was permitted though not required to perform the services; or
- (3) That the freelance worker maintained a regular place of business at an address within the City at which the services were performed and that the hiring party was aware of this regular place of business. It shall be rebuttably presumed that the hiring party was aware that the freelance worker maintained a regular place of business within the City if the written contract includes an address for the freelance worker located within the City; or
- (4) Where a freelance worker performs transportation or delivery services, that the contract included a transportation or delivery service area wholly or partially within the City and that the services in fact required transportation or delivery within the City.

(b) A freelance worker who passes only incidentally through the City in the performance of a contract is not covered by this Article.

(c) This Article shall be enforced only as to services actually performed by the freelance worker within the geographical boundaries of the City of Minneapolis.

40.760. – Timely payment required. (a) Except as otherwise provided by law, when the parties have entered into a written contract pursuant to Section 40.730 or Section 40.740 it is a violation of this ordinance for a hiring party to:

- (1) Fail or refuse to pay at least the agreed-upon compensation to a freelance worker on or before the time specified in the parties' contract. If the contract does not specify the date for payment of compensation or the mechanism by which such date shall be determined, payment shall be made no later than thirty (30) days after the completion of the freelancer's services under the contract, provided that

this thirty (30) day period shall begin to run when the freelancer notifies the hiring party that the services have been completed. This notification may be provided by any reasonable means including, but not limited to, the provision of a final invoice.

(2) Demand, after a freelancer has commenced work under the contract, that the freelancer accept as a condition of timely payment less compensation than the amount of the agreed-upon compensation.

(b) Except as otherwise provided by law, whenever a commercial hiring party retains the services of a freelance worker to perform services within the City of Minneapolis, and the agreed-upon compensation for such services is six hundred dollars (\$600) or more, or reasonably expected to be six hundred dollars (\$600) or more, either by itself or when aggregated with all contracts for services between the same commercial hiring party and freelance worker during the calendar year, but the commercial hiring party has failed to reduce the agreement to writing, it is a violation of this ordinance for the commercial hiring party to:

(1) Fail or refuse to pay at least the agreed-upon compensation to the freelance worker on or before the time agreed upon by the parties. If there was no agreement as to the time by which payment shall be made, payment shall be made no later than thirty (30) days after the completion of the freelancer's services under the contract, provided that this thirty (30) day period shall begin to run when the freelancer notifies the hiring party that the services have been completed. This notification may be provided by any reasonable means including, but not limited to, the provision of a final invoice.

(2) Demand, after the freelancer has commenced work under the agreement, that the freelancer accept as a condition of timely payment less compensation than the amount of the agreed-upon compensation.

(c) It shall be a defense to any violation charged under this section that the freelance worker has not completed the services contracted for, unless the failure to complete such services was caused by the hiring party's failure to cooperate in good faith with the freelance worker. However, the hiring party may not withhold timely payments for completed services because of a dispute over whether other services have been completed.

40.770. – Retaliation. It shall be unlawful for a hiring party, or any person acting on behalf of a hiring party, to deny or threaten to deny a current or future work opportunity to, or discriminate against, a freelance worker, or to take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelance worker from, exercising or attempting to exercise any right guaranteed under this Article.

40.780. – No Effect on Contract Validity; No Effect on Worker Classification Under Other Laws. (a) Failure to comply with this Article does not render any otherwise valid contract void or voidable or otherwise impair any obligation, claim or right related to such contract.

(b) This Article shall not be construed as providing a determination, for the purposes of any other law, of the legal classification of any individual as an employee or independent contractor.

(c) The existence of a written contract pursuant to this Article shall not be construed as evidence that an individual is an employee or an independent contractor for the purposes of any other law.

40.790. – Enforcement. (a) *Authority.* The Director has broad authority to implement, administer and enforce this Article. The Director shall have broad authority to investigate possible violations of this Article whenever there is cause to believe that any violation of this Article has occurred, either on the basis of a report of a suspected violation or on the basis of any other credible information, including violations found during the course of an investigation.

(b) *Report of Violations.* A freelance worker may report to the Department any suspected violation of this Article. A report of a suspected violation may be filed only if the matter complained of occurred after the effective date of this Article and within two (2) years prior to the filing of the report or, if the violation was willful and not the result of mistake or inadvertence, within three (3) years prior to the filing of the report. The filing of a report of violation shall not be construed as an admission or evidence that the freelance worker qualifies as an independent contractor for the purposes of any other law.

(c) *Enforcement process.* The Department shall investigate and enforce this Article pursuant to the process of Chapter 40, Article II, Sections 40.120 through 40.160, except for subsections 40.120(a) and (d). These sections are incorporated herein by reference, except that for purposes of enforcement of this Article only all references to “employers” shall be deemed to refer to hiring parties, all references to “employees” shall be deemed to refer to freelance workers, and all references to “lost wages” shall refer to amounts due but unpaid under the contract.

(d) *Relief and Administrative Fines.* If any party is found to have violated this Article, the Director shall order that party to cease and desist from engaging in the violative practice and may order appropriate relief, including but not limited to:

(1) A freelance worker who establishes a violation of Section 40.760 shall recover compensatory damages in the amount due but unpaid under the contract;

(2) A freelance worker who establishes a violation of Section 40.760 may be awarded liquidated damages in an amount up to double the compensatory damages awarded, or five hundred dollars (\$500), whichever is greater. In determining the amount of the liquidated damages, the size of the hiring party and the gravity of the violation shall be considered;

(3) A freelance worker who establishes a violation of Section 40.730 may be awarded damages of up to two hundred and fifty dollars (\$250) per violation. However, a commercial hiring party that has violated only Section 40.730 shall not be required to pay these damages unless the freelance worker also establishes that such worker requested a written contract and made the hiring party aware of the requirement that the contract be in writing before the contracted work began;

(4) A freelance worker who establishes a violation of Section 40.770 may recover compensatory damages for the retaliatory conduct in the amount due but unpaid under the contract, up to one thousand dollars (\$1,000). In determining the amount of the damages, the size of the hiring party and the gravity of the violation shall be considered;

(5) For a second or subsequent violation by the hiring party of Section 40.760 within a three (3) year period from the date on which the first violation occurred, payment by the hiring party to the Department of a civil fine of up to one thousand dollars (\$1,000) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered;

(6) For a second or subsequent violation by the hiring party of Section 40.730 within a three (3) year period from the date on which the first violation occurred, payment by the hiring party to the Department of a civil fine of up to two hundred and fifty dollars (\$250) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered. This fine shall be imposed only upon clear and convincing evidence that the hiring party had knowledge of the written contract requirements of this Article at the time that the second or subsequent violation occurred;

(7) For a violation of Section 40.770, payment to the Department of a civil fine of not less than seven hundred dollars (\$700) nor more than three thousand dollars (\$3,000) for each violation. In determining the amount of the penalty, the size of the hiring party and the gravity of the violation shall be considered;

(8) Reimbursement of the Department for reasonable costs of investigation expended in enforcing this Article, unless the payment of costs would impose an extreme financial hardship on the hiring party, in which case the Director may order the payment of a percentage of costs expended which will not cause extreme financial hardship. In determining the amount of the costs to be reimbursed, the size of the hiring party and the gravity of the violation shall be considered; and

(9) Payment to the Department of a civil fine of up to two thousand dollars (\$2,000) for failure to cooperate with the Department's investigation into a report of violation. In determining the amount of this fine, the size of the hiring party and the gravity of the failure to cooperate shall be considered.

(e) If, at any time before the Director issues a written determination of violation pursuant to Section 40.120(c), a freelance worker brings a private action in any court seeking to recover unpaid or underpaid compensation due under the same contract that is the subject of the Department investigation, that freelance worker's report of violation shall be deemed withdrawn and the investigation shall be closed. If, at any time before the Director issues a written determination of violation pursuant to Section 40.120(c), a hiring party brings a private action in any court seeking a judicial declaration regarding the compensation due under the same contract that is the subject of the Department investigation, the Department shall decline to continue the investigation and the investigation shall be closed. This closure shall be without prejudice to the investigation being reopened if the private action is dismissed without a decision on the merits. This section shall not prevent the Director from initiating an investigation when the Director has a reason to believe that a violation has occurred that has impacted the rights of a freelance worker who is not a party to the private action.

(f) The Director shall, in conjunction with other appropriate City departments, develop and implement a multilingual and culturally specific outreach and community engagement program to educate hiring parties and freelance workers about their rights and obligations under this Article. This outreach program shall include media, trainings and materials accessible to the diversity of hiring parties and freelance workers in the city.

40.800. – Preemption. Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. No provision of this Article shall apply to any hiring party that is operating under the protection of the bankruptcy court or under receivership or under a trustee appointed by a court of competent jurisdiction.

40.810. – No assumption of liability. In undertaking the adoption and enforcement of this Article, the City is undertaking only to preserve and protect safety, health, and general welfare. The City is not assuming liability, nor is it imposing on its officers and employees an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Article does not create a legally enforceable right against the City.

40.820. – Severability. If any of the parts or provisions of this Article or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.

40.830. – Rule making. The Director may make appropriate rules to implement, administer and enforce this Article. Such rules shall be consistent with this Article and may be relied upon by hiring parties and freelance workers in determining their rights and responsibilities under this Article. Rules shall be published and made available to the public at least ninety (90) days prior to their effective date. Any revisions to such rules shall be published and made available to the public at least thirty (30) days prior to their effective date.

40.840. – Annual Report. Beginning in 2022, and each year thereafter, the Director shall by March 31st provide a written report to the appropriate committee of the city council regarding this Article. The report shall include, but not be limited to, a discussion of the implementation and enforcement of this Article, including the number and nature of violations, specific violations, industries and occupations with high rates of violations, and the penalties assessed in the prior year. The report may also include recommendations for possible improvements to this Article.

40.850. – Effective Date. This Article shall be effective on January 1, 2021.